

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEON DAMIEN BENAVIDEZ,

Petitioner,

vs.

PAT VASQUEZ, Warden,

Respondent.

No. C 12-2161 JSW (PR)

**ORDER TO SHOW CAUSE;
GRANTING LEAVE TO PROCEED IN
FORMA PAUPERIS**

(Docket Nos. 2 & 5)

INTRODUCTION

Petitioner is a California prisoner proceeding pro se, and he has filed a pro se habeas corpus petition pursuant to 28 U.S.C. § 2254. He has applied for leave to proceed in forma pauperis. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

Based on his guilty plea, Petitioner was convicted in Santa Clara County Superior Court of receiving a stolen car. The trial court sentenced him to a term of 44 months in state prison based upon this conviction and a sentence enhancement for prior convictions. Petitioner's appeals to the California Court of Appeal and the Supreme Court of California were denied.

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DISCUSSION

I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

II Legal Claims

As grounds for federal habeas relief, Petitioner claims: (1) his sentence was not authorized because it included a one-year sentence enhancement for a prior theft conviction that had been dismissed; and (2) the prosecutor committed misconduct by negotiating the plea agreement without telling Petitioner that the prior theft conviction was dismissed. Petitioner’s claims are sufficient to warrant a response from Respondent.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **ninety (90)** days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based upon the claims found cognizable above. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition. If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on Respondent within **thirty (30)** days of the date

1 the answer is filed.


2 3. Respondent may, within **ninety (90) days**, file a motion to dismiss on
3 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to
4 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,
5 Petitioner shall file with the Court and serve on Respondent an opposition or statement of
6 non-opposition within **thirty (30) days** of the date the motion is filed, and Respondent
7 shall file with the Court and serve on Petitioner a reply within **fifteen (15) days** of the date
8 any opposition is filed.

9 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
10 the Court informed of any change of address by filing a separate paper captioned "Notice
11 of Change of Address." He must comply with the Court's orders in a timely fashion.
12 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
13 to Federal Rule of Civil Procedure 41(b).

14 5. The application to proceed in forma pauperis (docket numbers 2 & 5) is
15 GRANTED in light of Petitioner's lack of funds.

16 IT IS SO ORDERED.

17 DATED: June 11, 2012

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19 _____
20 JEFFREY S. WHITE
21 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LEON DAMIEN BENAVIDEZ,

Plaintiff,

v.

PAT VASQUEZ et al,

Defendant.

Case Number: CV12-02161 JSW


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 11, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Leon D. Benavidez
North Kern State Prison
P.O. Box 5000
Delano, CA 93216-5000

Dated: June 11, 2012


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk